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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/531,679

Filing Date: April 15, 2005

Appellant(s): BUNSMANN, WINFRIED

Klaus P. Stoffel
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 20JUL09 appealing from the Office action mailed 17MAR09.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

US 2,768,025	SPEAR, JR et al.	10-1956
US 5,636,894	KINNANEN	6-1997
US 6,866,324	NEUBRAND et al.	3-2005

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

(A) Claims 1, 2, 4, 5, and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over SPEAR, JR. et al.

Regarding claim 1, SPEAR, JR. et al. disclose a convertible with a roof (32) that is movably supported relative to an automobile body, wherein the roof can be moved in a translatory direction at least nearly horizontally between a closed position (Figure 1), in which a front roof section is supported on and is in a mounting connection with a windshield frame (26), and an intermediate position (Figure 2), in which the mounting connection between the roof and the windshield frame is released and in which the front roof section can be swiveled upward. The front roof section is considered to be the forward portion of the roof in the vehicle travel direction. The roof of SPEAR, JR. et al. has a rotational component (Figure 2) and a translatory displacement (initial movement) and the rotational movement occurs in succession. The roof of SPEAR, JR. et al. is supported on lateral main bearings (47) relative to an automobile body, wherein the main bearings can be moved at last nearly horizontally relative to the automotive body. SPEAR, JR. et al. discloses a convertible roof, however fails to specifically state the distance of the at least nearly horizontal movement is between two and eight centimeters. It is, however, an obvious expedient to choose whatever distance is needed to disengage the front roof part from the window frame in order to pivot the roof to the open position.

As to claim 2, SPEAR, JR. et al. discloses that in the rearwardly displaced position of the roof, the front roof section can be swiveled upward about the main bearings.

As to claim 4, SPEAR, JR. et al. discloses the front roof section is mounted on the windshield frame without locks (Column 1, Line 3-9), and at least one locking device is assigned to the displaceable main bearings (Column 4, Line 43-48).

As to claim 5, SPEAR, JR. et al. discloses a positive locking connection can be made between the front roof section and the windshield frame.

As to claim 8, SPEAR, JR. et al. shows the distance of the horizontal displacement is limited to a roof position in which the front roof section can swivel freely upward without danger of collision with the windshield frame. As seen in Figure 1-3, the track (33) has a horizontal upper portion, where the roof disengages the window frame, and an angled portion, where the roof begins its pivoting movement. The angled section is shown aft of the upper horizontal section.

(B) Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over SPEAR, JR. et al. in view of KINNANEN.

Regarding claim 6, SPEAR, JR. et al. discloses a convertible as applied to claim 1; however fails to disclose pins.

KINNANEN teaches (Column 3, Line 18-28) pins (6), which are located essentially in the extension direction of the front roof part, are assigned to the front roof section and can fit into complementary recesses (7) of the windshield frame.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device described by SPEAR, JR. et al. with pins, as taught by KINNANEN, in order to guide the final movement of the front roof section and to fixedly secure the roof in place in the closed position.

As to claim 7, KINNANEN teaches a pin (6) that fits into a 'funnel' shaped recess (7) (claim 5) implying a substantially conical pin. Alternately, it would have been an obvious expedient to shape the pin of KINNANEN to whatever shape was desired.

(C) Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over SPEAR, JR. et al. in view of NEUBRAND et al.

SPEAR, JR. et al. discloses a convertible as applied to claim 1 previously, including the roof comprising several rigid roof parts, wherein a rear roof part extends at least between a belt line and a front roof part that is located in front of it in the direction of travel and above a passenger compartment.

SPEAR, JR. et al. fails to disclose the rear roof part having a middle section.

NEUBRAND et al. teaches a rear roof part (126), a front roof part (120), and wherein the rear roof part has a middle section (130, 154, 156), which, in the closed state of the roof, lies between lateral main posts (132,134) and encloses a rear window (130).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device described by SPEAR, JR. et al. with a middle section, as taught by NEUBRAND et al., in order to pivot the rear window separately from the rear pillars.

(10) Response to Argument

(A) The Rejection of Claims 1, 2, 4, 5 and 8 under 35 U.S.C. § 103(a):

The rejection of claims 1, 2, 4, 5 and 8 under 35 U.S.C. § 103(a) as unpatentable over SPEAR, JR. et al. is proper and should be sustained.

Appellant argues first on page 6, line 19 that the roof of SPEAR, JR. et al. is not rotated about a transverse axis. The Appellant further argues that when the roof is opened, the roof is moved only in a continuous downward and rearward movement without being pivoted.

In response to the Appellant's first argument, the Examiner respectfully disagrees. The above described motion would only occur if the track (33) of SPEAR, JR. et al. were linear along its complete length, but that is not the case. The track of SPEAR, JR. et al. is in fact curvilinear so as to impart a first horizontal movement of the roof (32), then a rotational movement of the roof upward to lift the forward end of the roof, then a central linear movement substantially at an angle of 45° to lower the roof into a storage space, then a second rotational movement of the roof downward to lower the forward end of the roof, followed by another horizontal movement to completely place the roof behind the second row of seats. The axis of rotation is located in a horizontal plane in the transverse direction of the vehicle and moves substantially along the length of the track (see argument below). The transverse axis of rotation is not at a fixed position, but neither is the Appellant's axis of rotation and as this feature is not on appeal, it is of no concern.

Appellant secondly argues on page 7, line 9, that SPEAR, JR. et al. does not have any main posts, yet the "main post" claim limitation does not appear until claim 10, and as such is not treated in the rejection of claim 1.

Appellant thirdly argues on page 6, line 12, that the movement of SPEAR, JR. et al. is a translatory movement on a curved track.

In response to the Appellant's third argument, the Examiner respectfully disagrees. The above described translatory motion would only occur in two situations:

1. If each of the trolley portions (47, one located on each side of the vehicle) of SPEAR, JR. et al. contained two rollers (48) and there were two parallel curvilinear tracks on each side of the vehicle, as is performed in the common escalator, then the roof could move in a translatory motion, but that is not the case. There is only one track per side and the roof is clearly shown pivoted in Figure 2.

2. If each of the trolley portions of SPEAR, JR. et al. contained one roller and the roof were somehow physically maintained in a non pivotal orientation, but that is not the case. Each trolley is clearly shown with two rollers.

Appellant argues lastly on page 6, line 23, that SPEAR, JR. et al. does not disclose a roof which is supported by main bearings and which can be pivoted about the main bearings. The Appellant further argues that the reference merely provides trolleys (47) with rollers (48), that it is not possible at any time to pivot the roof about these trolleys, and that there is not even a pivoting axis around which the roof could be pivoted.

In response to the Appellant's fourth argument, the Examiner respectfully disagrees. Each trolley (47) of SPEAR, JR. et al. has two rollers spaced apart. The first roller is located at the forward portion of the trolley while the second roller is located at the rearward portion of the trolley. This orientation is mirrored on the opposite side of the vehicle. The rollers are bearings in that the weight of the roof is born through contact of the bearing surface on the inside surface of the track (33) of SPEAR, JR. et al. The rollers support the weight of the roof. The rollers are main bearings in that any other bearing on the roof are not premier/primary bearings. The transverse pivot axes of the front and rear rollers define an imaginary line located approximately along the length of the trolley. The exact location of the roof's transverse pivot axis is located at

the center of the imaginary line. The location of the roof's transverse pivot axis does not always correspond to the track, especially in the curves, but as this feature is not on appeal, it is of no concern.

(B) The Rejection of Claims 6 and 7 under 35 U.S.C. § 103(a):

The rejection of claims 6 and 7 under 35 U.S.C. § 103(a) as unpatentable over SPEAR, JR. et al. in view of KINNANEN is proper and should be sustained for the reasons above.

(C) The Rejection of Claim 10 under 35 U.S.C. § 103(a):

The rejection of claim 10 under 35 U.S.C. § 103(a) as unpatentable over SPEAR, JR. et al. in view of NEUBRAND et al. is proper and should be sustained for the reasons above.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Examiner Paul A. Chenevert

/GLENN DAYOAN/

Supervisory Patent Examiner, Art Unit 3612

Conferees:

/D. Glenn Dayoan/, SPE, Art Unit 3612

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